



## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	December 6, 2021
<b>From:</b>	John F. Connolly, Executive Director, Planning & Development
<b>Report Number:</b>	Planning 2021-65
<b>Subject:</b>	Merger Agreement & Morton Line Assumption - Bigelow

### Recommendations:

1. That Council consent to the discharge and release of the Merger Agreement from the title to Lot 1, Concession 9 of Cavan save and except Part 1 on plan 45R-9731; and
2. That the Mayor and Clerk be authorized to execute the Acknowledgment and Direction for the transfer deed for the forced road allowance (Morton Line) and have this section of Morton Line dedicated as public road allowance as described under By-law No. 2021-75.

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### Overview:

Mr. Nicolas J. Hill of Jack McVicar Professional Group represents Kirk, Frances and Katherine Bigelow, co-owners of a property at the intersection of Morton Line and Dranoel Road in the Township of Cavan Monaghan. On January 15, 2021, the Township received correspondence regarding the Merger Agreement affecting Lot 1, Concession 9 Cavan. A key map showing the location of the subject property is provided as Attachment No. 1 to this Report.

The subject property was created by severance in 1993 (B-86-92) as a result of executing a Merger Agreement with the Township. At the time, the applicant owned two (2) separately conveyable parcels of land separated by a Township road allowance (Morton Line). The applicant applied to sever a small lot for residential purposes from one of the parcels. According to documentation, the Merger Agreement was required because the retained lands would not meet the minimum lot size in the applicable planning documents at the time of the application. The Merger Agreement essentially "tied" the 2 parcels (North and South of Morton Line) to be considered as part of the retained lots in order to meet the policy directives of minimum lot sizes. The Merger Agreement is registered on title.

### Merger Agreements

When this matter was first brought to Staff's attention in 2020, a legal opinion was sought to examine the validity and "enforceability" of merger agreements as a whole

and in particular, the Merger Agreement in question. Legal opinion from counsel confirmed that merger agreements have no statutory basis and do not achieve the intended purpose of legally merging or “tying” what would otherwise be separately conveyable parcels of land. As a result, Staff are of the position that there is no valid reason for the Township to withhold consent to the deletion of the merger agreement from the subject property.

### **Road Assumption – Morton Line**

As outlined in Mr. Hill’s correspondence (Attachment No. 2), it is his contention that the property is actually two (2) separate parcels with one parcel to the north (to be retained) and another parcel (of roughly 9 acres in size) to the south of Morton Line. As part of the background work, it was also revealed that the Township does not own a portion of Morton Line. As a result, Mr. Hill is asking two things from the Township:

- 1) That the Township accept a transfer/deed for the portion of Morton Line crossing the Bigelow property; and
- 2) That the Township execute a registerable release of the property from the 1993 Merger Agreement.

In response to the request(s), Township Staff indicated that this portion of Morton Line is a forced road and has been used by the public and maintained by the Township for some time now. However, Staff believe there is merit in the formal transfer of the portion of the road that crosses the property and having it properly transferred and registered. Township Staff also recognize that Morton Line naturally severs the subject property and that given the validity of the existing Merger Agreement there is merit to discharge and release the agreement once the road has been transferred.

As a result, it was determined that a reference plan was to be completed for the road as it crosses the subject property as the first step to permit Township Staff to bring this before Council to dedicate this as a public road. Once this is done and the road is transferred and registered, the Township would then issue permission/consent to releasing the merger.

The draft reference plan was completed by Elliott and Parr (Surveyors) and received by the Township at the end of October (Attachment No. 3). This Report and approval by Council will fulfill the commitment to transfer the deed for the portion of Morton Line and also release the merger agreement registered on title.

### **Financial Impact:**

As part of the agreement reached on this matter, the Township agreed to cost share on the survey and supported the landowner paying for the other costs as outlined in correspondence. The Township’s cost is for half the estimated survey of approximately between \$8,500 to \$9,350 (+HST) which would be between \$4,250 and \$4,675 (+HST) which would come from GL-01-4920-4100 (Contracted Services).

**Attachments:**

Attachment No. 1 – Key Map – Subject Property

Attachment No. 2 – Correspondence, Mr. Nicholas Hill dated January 15, 2021

Attachment No. 3 – Reference Plan

Attachment No. 4 – By-law No. 2021-75

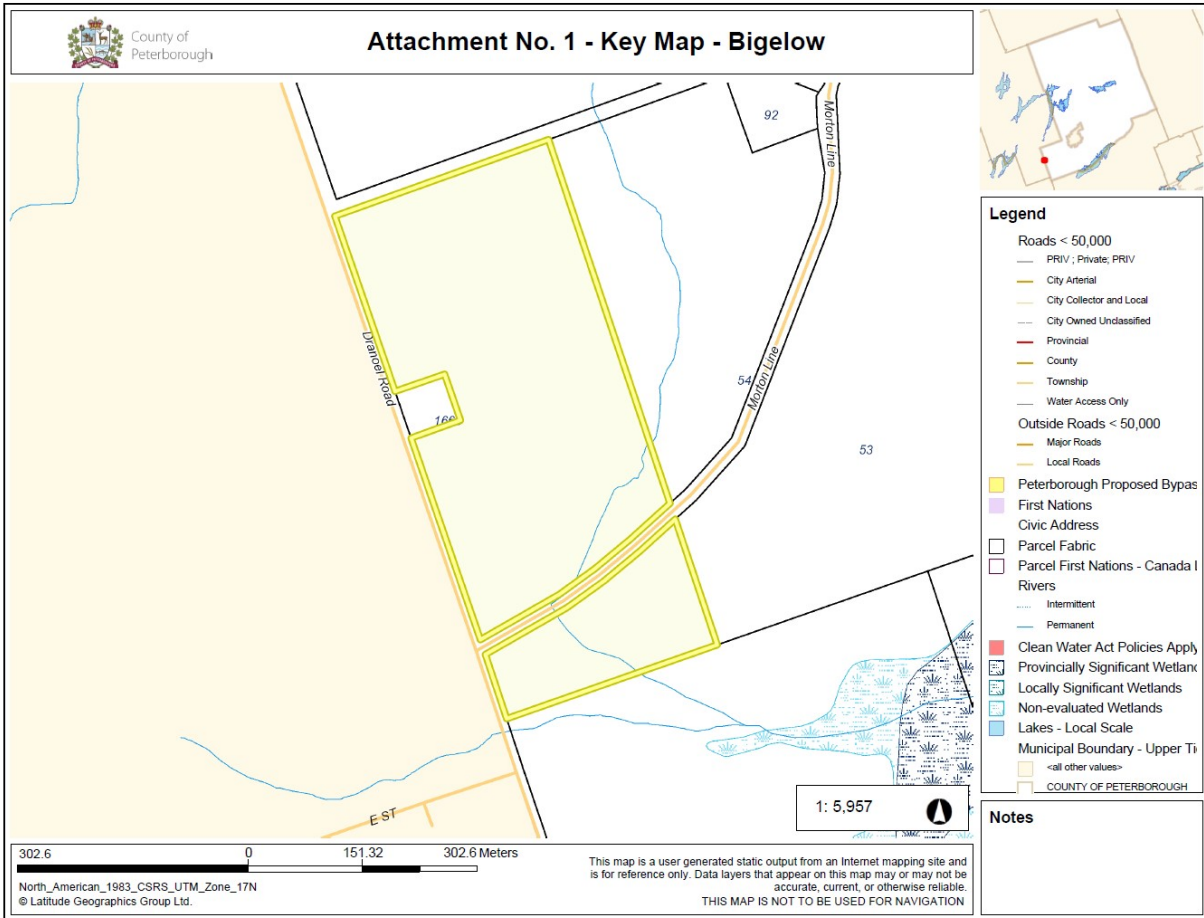
Respectfully Submitted by,

Reviewed by,

John F. Connolly  
Executive Director, Planning & Development

Yvette Hurley  
Chief Administrative Officer

# Attachment No. 1



## Attachment No. 2

### JACK MCVICAR PROFESSIONAL CORP.

Jack McVicar, LL.B. (1944-2015)  
Nicholas J. Hill, J.D.



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Township of Cavan Monaghan  
Cavan Monaghan Municipal Office  
988 County Rd 10  
Millbrook, ON L0A 1G0



January 15, 2021

Attention: Planning & Development Department

RE: Bigelow Property – Morton Line and Dranoel Road  
My file No.: B800-2

I have been retained by Kirk, Frances, and Katherine Bigelow, co-owners of a property at the intersection of Morton Line and Dranoel Road. The property is legally described as the *northwest quarter of lot 1 in concession 9 of Cavan, save and except part 1 on plan 45R9731*. On the attached Property Index Maps the parcel is labelled as parcel 'A'. I have also enclosed the parcel register, labelled with 'A' at the top.

The Bigelow property is, in reality, divided into two pieces by Morton Line. The Bigelows would like the ability to sell/transfer the roughly nine acres south of Morton Line. Frustrating this desire are two things:

1. The Municipality does not own legal title to Morton Line as it crosses the Bigelow property;
2. There was a Merger Agreement executed and registered in 1993 between the Township and Francis Bigelow.

Because the Township does not own this portion of Morton line there is no legal "natural severance" of the property by the road.

The Merger Agreement says "THE OWNER will treat the remaining lands in the said north west quarter of Lot Number One in the Ninth Concession of the Township of Cavan as one parcel and will not take advantage of the natural severance created by the forced road running through the said north west quarter of Lot Number One in the Ninth Concession of the Township of Cavan".

The Merger Agreement was executed in 1993, in the context of Francis Bigelow receiving a severance off of the Bigelow property. The specific reason the Township wanted the Merger Agreement at the time is not clear.

Note that the Township does own Morton Line to the east of the Bigelow property, labelled as 'C' on the enclosed Property Index Maps, which land is held by the "Public Authority Having Jurisdiction".

The Bigelows now formally request two things of the Township:

1. That the Township accept a transfer/deed for the portion of Morton Line crossing the Bigelow property;
2. That the Township execute a registerable release of the property from the 1993 Merger Agreement.

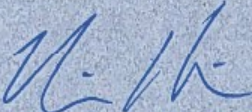
#1 will require a reference plan of the road as it crosses the Bigelow property and, as the end result of this will be the legal clarification of the roads owned by the Township which will afford the Township the opportunity to register a by-law designating this portion of the road a public highway, the Bigelows request that the Township cover the cost of said survey.

The Bigelows are willing to pay for the costs of having the deed/transfer registered, the release of the Merger Agreement registered, and for their own legal fees for all of the foregoing.

Please put this formal request to Council and inform me of any timelines and developments.

Please let me know if you require any additional information from my search of title, and feel free to telephone me to discuss any of the above.

Sincerely,



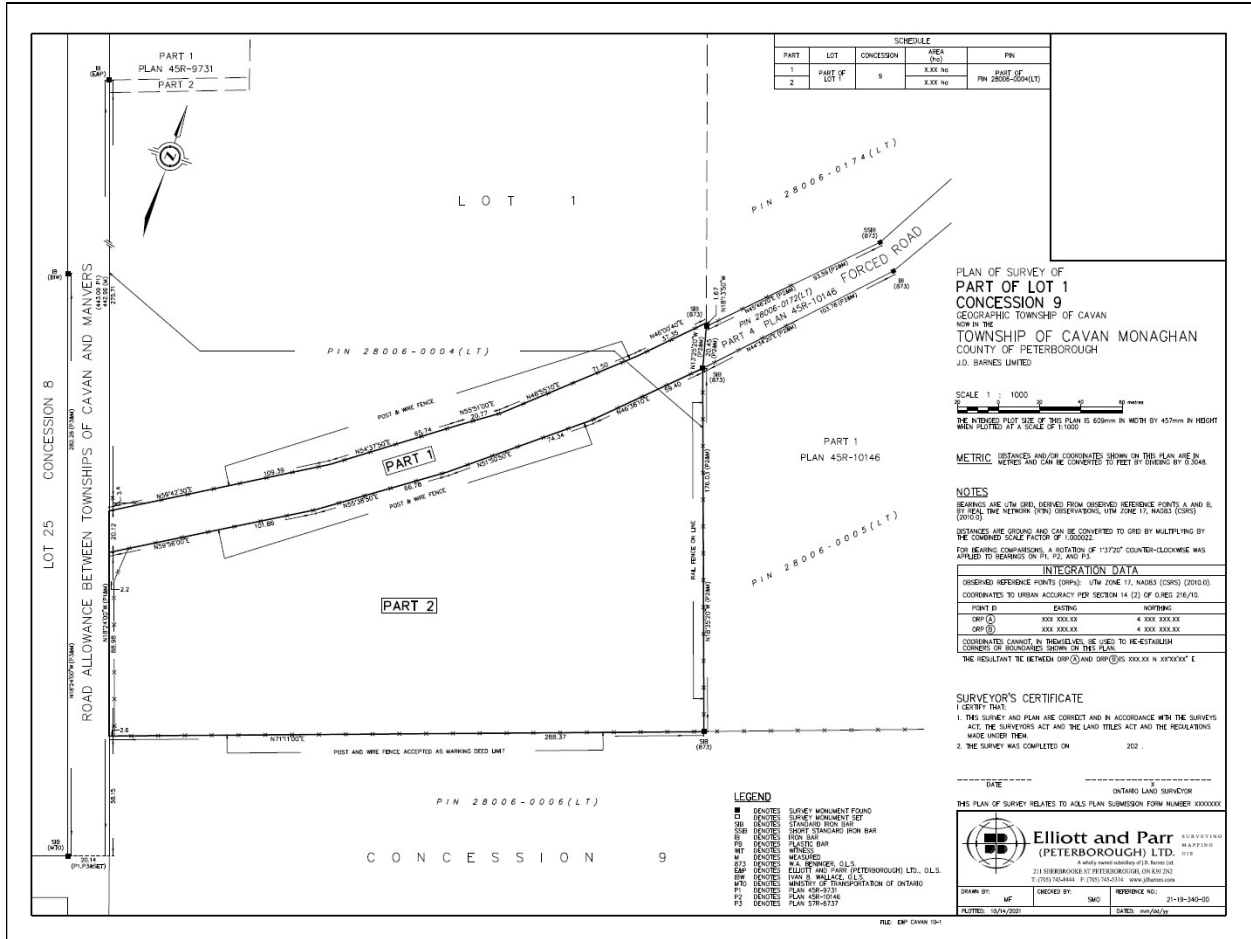
Nicholas J. Hill

Encl/

*List of Attachments:*

- *PIN Map*
- *PIN Map second view*
- *Parcel Register A – 2 pages*
- *Parcel Register C*
- *Plan 45R10146 from Parcel C*
- *Merger Agreement – 3 pages*

# Attachment No. 3



**Attachment No. 4**

**The Township of Cavan Monaghan**

**By-law No. 2021-75**

**Being a by-law to authorize the execution of the Acknowledgement and Direction for the transfer of PIN 28006-004 (LT) to the Township of Cavan Monaghan**

Whereas the Council of the Township of Cavan Monaghan deems it desirable to execute and transfer the above mentioned forced road allowance.

No Therefore the Council of the Township of Cavan Monaghan hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute the Acknowledgment and Direction for the transfer deed for the forced road allowance (Morton Line) as described under PIN 28006-0004 (LT); and
2. That the Reference Registered Plan 21-19-340-00 is attached as Schedule 'A' to this By-law.

Read a first, second and third time and passed this 6<sup>th</sup> day of December, 2021.

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**Scott McFadden**  
Mayor

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**Cindy Page**  
Clerk